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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 20554

Re: Ex Parte Proposed Declaratory Ruling and Third Report and Order, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79

Dear Ms. Dortch:

The County of Los Angeles ("County") submits these *ex parte* comments in response to the Federal Communications Commission ("FCC") proposed Declaratory Ruling and Report and Order in the above entitled matter ("Proposed Order"). The Proposed Order imposes needless new requirements on state and local governments in their review and evaluation for placing such facilities in the public rights-of-way (ROW) purportedly to remove obstacles to the placement of Small Wireless Facilities. In reality, the Proposed Order subsidizes the lucrative wireless industry's access to County property and dictates how the County manages its own public property to the detriment of the County and its citizens. This is an unwarranted intrusion into local government's control over siting of wireless facilities preserved by Congress as well as into its property rights. As a result, the County objects and opposes the Proposed Order.

More specifically, the Proposed Order would seriously impede the County's ability to thoroughly and appropriately review applications to place Small Wireless Facilities within the County's ROW, and would significantly undermine the County's ability to ensure that facilities meet local standards for safety, the environment, aesthetics and neighborhood input. The Proposed Order shortens time and reduces resources necessary to properly evaluate applications.

This, in turn, could endanger public safety, reduce the County's ability to mitigate against environmental concerns, properly address aesthetic issues, and eliminate public input on projects affecting County neighborhoods. Thus, the County urges the FCC to defer enactment of these regulations.

1. The FCC's Proposed Definition of effective prohibition is too broad. The Order interprets Sections 253 and 332 of the Communication Act to find that "a state or local legal requirement constitutes an effective prohibition if it 'materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.'" (§34). This is contrary to decisions of federal courts, including the Ninth Circuit which governs the County. Moreover, the FCC's Proposed Order completely ignores the other provisions of Sections 253 and 332, which preserve the authority of a state or local government to "manage the public rights-of-way or to require fair and reasonable compensation from telecommunication providers." (Section 253(c) and see also Section 332(c)(7).) Thus, contrary to the FCC's assertion, the regulations are likely to create greater conflict and litigation as local governments struggle to protect communities.

2. The Declaratory Ruling Seriously Shortens the Time Necessary to Evaluate Applications. The Proposed Order would require shortening the "shot clock" from 90 days to 60 days for colocations and from 150 days to 90 days for new facilities. This extremely short time frame results in an effective prohibition of appropriate land use planning discretion, public participation and review of land use and aesthetic impacts. Such time frames also would eliminate the County's ability to ensure mitigation of potential site specific environmental concerns.

Moreover, there are no extensions for large batch applications under the Proposed Order. Thus, if applicants submit numerous applications at the same time, this would further limit the County's ability to meaningfully evaluate the applications.

While there is no "deemed granted" provisions, inaction before expiration of the applicable shot clocks will be deemed an "effective prohibition." The locality is then expected to issue "all necessary permits without further delay." That directive is tantamount to a "deemed granted" provision. If not done, an applicant can challenge the failure to grant the necessary permits, forcing a local jurisdiction to rebut the presumption of a violation by showing the "shot clock" was not reasonable. This creates a huge potential for litigation, which would extend, rather than shorten, the time for approval of the appropriate permits.

3. The Declaratory Ruling Limits Application and Permit Fees to an Amount Which Prevent Reviewing Agencies from Effectively Evaluating Proposed Small Wireless Facility Applications. Any telecommunications company which seeks to place a Small Wireless Facility that encroaches in the County's ROW, must apply for a conditional use permit ("CUP"). The process includes a review of the site plan, evaluation of the site, requests to other County departments for comments on the proposal, meeting with the applicant, establishing conditions and a public hearing. The CUP application is \$9,473. As required by California law, the fee is already established to only recover the costs to provide review of the CUP. The fee charges are supported by a fee study to recover actual County costs, approved by the Auditor-Controller, and adopted by the County's governing body, the Board of Supervisors. If construction of the facility is required within the ROW, the applicant must also obtain an encroachment permit. Encroachment permits are required to ensure that construction will not negatively impact the public use of the ROW. The fee charged for that permit is needed to cover the cost of the review of the application and site inspection.

While the FCC claims it wants to avoid a cookie cutter approach, the Proposed Order does just that by presuming the reasonable fee as \$100 per site (\$500 application fee for up to five sites, and \$100 for each site thereafter), regardless of the particular jurisdiction or its requirements. The actual cost of issuing a County permit exceeds this "presumed" reasonable fee enumerated by the FCC. That fact will also likely lead to litigation as applicants challenge the County's fee structure.

The County is concerned that the potential effective date for FCC's Small Cell Proposed Order will require design standards be published in advance of application submittal for the standards to be effective. It will take approximately one year from order adoption for the relevant County departments to develop and publish standards. Therefore, the County requests that, if the Proposed Order is adopted, the effective date of the order be extended to one year from adoption.

4. The Proposed Declaratory Ruling Limits the Revenues the County Collects for Encroachment on the County's Rights of Way Rent. Wireless facilities that encroach on the County's ROW are required to provide compensation for the use of such ROW. Section 253 states that "noting in this section affects the authority of a State or local government . . . to require fair and reasonable compensation from telecommunication providers, . . ." There is no mention of using costs as basis for determining what is fair and reasonable.

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Allowing the County to require fair and reasonable compensation puts it on par with private property owners. Under the County's provisions for wireless facilities not in the ROW, the applicant must demonstrate that it has the owner's permission to use its property, which is sometimes denied, and, if granted, usually results in a lease between the applicant and the property owner based on market considerations.

Further, the County questions the basis for the Proposed Order. In the County, the vast majority of wireless site applications, well over 90 percent, are approved in relatively short order.

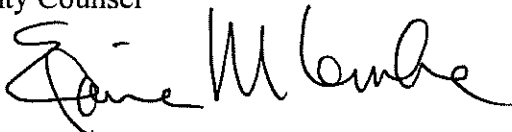
The County continues to work with private business to develop a strong and vibrant Broadband infrastructure for all residents. However, the County opposes the FCC's Proposed Order as contrary to federal law, it restricts local land use and zoning authority and impedes local efforts to develop infrastructure that can provide services to all segments of our community, without negatively impacting County residents, including the low income and underserved members of the County.

For the foregoing reasons, the County requests that the FCC reject or amend the Proposed Order.

Very truly yours,

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By



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